



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** RMS Industries  
**File:** B-245539  
**Date:** December 9, 1991

Richard Snyder for the protester.  
Michael Trovarelli, Esq., Defense Logistics Agency, for the agency.  
Henry J. Gorczycki and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Exclusion of an initial offer from consideration for award was reasonable where the required Product Demonstration Model (PDM) was not submitted before the closing time for receipt of offers and where that the PDM itself was the most important evaluation factor under the request for proposals; to allow the omission to be cured after the time set for receipt of proposals would be inconsistent with the clause governing late proposals.
2. Late modification of a proposal may only be made to an "otherwise successful proposal"; a proposal is not an "otherwise successful proposal" if it would not result in the award of the contract to the offeror regardless of the late modification.

### DECISION

RMS Industries protests the exclusion of its proposal from evaluation for award under request for proposals (RFP) No. DLA100-91-R-0501, issued by the Defense Personnel Support Center, Defense Logistics Agency, for gloves.

We deny the protest.

The RFP required offerors to submit their proposals by 3:00 p.m. on August 19. Each proposal was to include a Product Demonstration Model (PDM) consisting of two product samples. The evaluation factors listed in descending order of importance were: (1) PDM; (2) offeror's commitment to customer satisfaction; (3) past performance; and (4) price.

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RMS submitted the written portion of its proposal before 3:00 p.m. on August 19. RMS's initial submission did not include the PDM. RMS informed the agency that its product samples were not ready and that it would be submitting its PDM late. RMS submitted the PDM to the agency on August 28. The agency declined to consider RMS's PDM, since it was submitted late, and excluded RMS's proposal from further consideration.

RMS alleges that the agency's exclusion of its proposal from the competition was unreasonable and improper. RMS argues that the RFP did not require proposals to be rejected in situations where the PDM was submitted late. RMS also argues that Federal Acquisition Regulation (FAR) §§ 15.412(c) and 52.215-10(g) permit consideration of its proposal, despite its late PDM submission, because RMS assertedly offered the lowest price. The agency responds that since the PDM was required by the RFP to be a vital part of the offer, RMS's proposal was properly rejected.

Rejection of an initial offer is proper where the initial offer is so deficient that in essence no meaningful proposal was submitted; to allow the omissions to be cured after the time set for receipt of initial proposals would be inconsistent with the clause governing late proposals. FAR § 15.215-10(a) governs late proposals and provides that any proposal received after the time set for receipt will not be considered unless it is covered by one of the specified exceptions not applicable here.<sup>1</sup> Panasonic Comms. & Sys. Co., B-239917, Oct. 10, 1990, 90-2 CPD ¶ 279.

Here, DLA properly rejected RMS's proposal for its failure to submit a PDM. The RFP stated "[p]roposals which do not provide the requested information may not be considered further for award" and "[t]he PDM . . . must be received prior to the time and date for closing of offers." As indicated above, the PDM itself, which was to be visually evaluated, was the most important evaluation factor and was thus the most material part of the proposal for evaluation purposes. RMS, by failing to timely submit the PDM, was reasonably found not to have submitted a meaningful proposal on time. Modifications to, or portions of, proposals, such as samples, that are received at the designated office after the exact time specified for receipt of proposals may not be


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<sup>1</sup>These exceptions concern submissions that are timely mailed but are received late due to delays in the mail service or due to mishandling by the government, or a late submission that is the only proposal received. FAR § 15.215-10(a).

considered in determining the acceptability of an initial offer. See FAR §§ 15.412(c), 52.215-10; American Video Channels, Inc., B-236943, Jan. 18, 1990, 90-1 CPD ¶ 67; E-Sys., Inc., B-188084, Mar. 22, 1977, 77-1 CPD ¶ 201. Under the circumstances, RMS's proposal was properly rejected; to allow RMS's late submitted PDM to be considered is inconsistent with the requirements governing late proposals. Panasonic Comms. & Sys. Co., supra; Video Channels, Inc., supra.

RMS claims that FAR § 52.215-10(g), which permits the late modification of "otherwise acceptable proposals," should be applicable.<sup>2</sup> However, FAR § 52.215-10(g) only permits the late modification of "otherwise successful proposals." An "otherwise successful proposal" is one that would result in the award of the contract to the offeror regardless of the late modification.<sup>3</sup> Westway Mfg. Co., Inc., B-224236, Oct. 3, 1986, 86-2 CPD ¶ 391. Since RMS's initial submission was not, and could not have been, in line for award, RMS cannot avail itself of this FAR provision since its proposal was not otherwise successful.

The protest is denied.

  
James F. Hinchman  
General Counsel

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<sup>2</sup>FAR § 52.215-10(g) states:

"Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted."

<sup>3</sup>Late modifications that are favorable to the government are only permitted in such circumstances because the relative standing of other offerors is not affected by such modifications.